

REMARKS

Claims 1-37 are pending in the present application. The Examiner has rejected claims 1-37. Claims 1-12, 20-33, 36 and 37 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,006,112 ("Rucki") in view of U.S. Patent No. 6,327,463 B1 ("Welland"). Claims 13-15, 19, 34 and 35 stand rejected under 35 U.S.C. § 103(a) as being obvious over Rucki in view of U.S. Patent No. 5,054,114 ("Erickson"). Claims 16-18 stand rejected under 35 U.S.C. § 103(a) as being obvious over Rucki in view of Erickson, and further in view of U.S. Patent No. 5,375,257 ("Lampen").

Applicants presented an eight (8) page response on April 29, 2004 ("previous response"), which is incorporated herein by reference in its entirety. In that previous response, with respect to claims 1-12, 32 and 33, Applicants argued that (1) Rucki and Welland did not teach each and every element of the claims; (2) Rucki and Welland teach away from the claimed invention; (3) Rucki and Welland teach away from each other; and (4) there is no motivation for combining Rucki and Welland. In that previous response, with respect to claims 13-15, 19, 34 and 35, Applicants argued that (1) Rucki and Erickson teach away from each other; and (2) Rucki and Erickson do not teach each and every element of the claims. In that previous response, with respect to claims 16-18, Applicants argued that Rucki, Erickson and Lampen cannot be properly combined.

To these significant arguments and substantial supporting rebuttal evidence with respect to three different sets of claims, the Examiner's response totaled a mere sixteen (16) words: "Applicant's arguments filed on April 29, 2004 have been fully considered but they are not persuasive."

The Final Office Action did not provide any reason or explanation as to why Applicant's arguments were not persuasive. The Final Office Action did not address any of the critical issues raised by Applicants. The Final Office Action did not specifically address any of Applicants' rebuttal evidence or arguments. For example, how did the Examiner overcome the fact that the various combination of references did not teach each and every element as set forth in the claims? In another example, how did the Examiner overcome all of the rebuttal evidence that the references taught away from each other? In yet another example, how did the Examiner overcome all of the rebuttal evidence that the references taught away from the subject matter set forth in the claims? Any one of these arguments *alone* is reason for withdrawing the

obviousness rejection, so how did the Examiner overcome *all* of the evidence and *all* of the arguments? What compelling evidence did the Examiner find in the record to overcome *all* of the evidence and *all* of the arguments presented by Applicants? These are reasonable questions deserving a full and fair hearing, especially for a case under final rejection.

Applicants respectfully draw the attention of the Examiner to M.P.E.P. § 706.07 which states that “[t]he examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal.” The above-raised questions and the issues raised in the previous response deserve a full and fair hearing.

Applicants further respectfully draw the attention of the Examiner to M.P.E.P. § 2144.08 (III) entitled “RECONSIDER ALL EVIDENCE AND CLEARLY COMMUNICATE FINDINGS AND CONCLUSIONS”, which states:

A determination under 35 U.S.C. 103 should rest on all the evidence and should not be influenced by any earlier conclusion. See, e.g., *Piasecki*, 745 F.2d at 1472-73, 223 USPQ at 788; *In re Eli Lilly & Co.*, 902 F.2d 943, 945, 14 USPQ2d 1741, 1743 (Fed. Cir. 1990). Thus, once the applicant has presented rebuttal evidence, Office personnel should reconsider any initial obviousness determination in view of the entire record. See, e.g., *Piasecki*, 745 F.2d at 1472, 233USPQ at 788; *Eli Lilly*, 902 F.2d at 945, 14 USPQ2d at 1743. All the proposed rejections and their bases should be reviewed to confirm their correctness. Only then should any rejection be imposed in an Office action. The Office action should clearly communicate the Office’s findings and conclusions, articulating how the conclusions are supported by the findings.

Where applicable, the findings should clearly articulate which portions of the reference support any rejection. Explicit findings on motivation or suggestion to select the claimed invention should also be articulated in order to support a 35 U.S.C. 103 ground of rejection. *Dillon*, 919 F.2d at 693, 16 USPQ2d at 1901; *In re Mills*, 916 F.2d 680, 683, 16 USPQ2d 1430, 1433 (Fed. Circ. 1990). Conclusory statements of similarity or motivation, without any articulated rationale or evidentiary support, do not constitute sufficient factual findings.

Despite the warnings and guidelines set forth in the M.P.E.P. § 2144.08 (III), it appears that the Final Office Action does not meet the high standards of analysis and evidentiary support mandated by the M.P.E.P. § 2144.08 (III). The Final Office Action merely provided a conclusory statement. The Final Office Action did not provide evidence that specifically

overcame Applicants' rebuttal evidence and arguments. The Final Office Action did not provide a reasoned analysis that specifically overcame Applicants' rebuttal evidence and arguments.

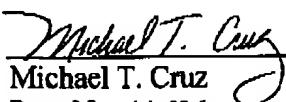
Applicants respectfully request that a subsequent office action be issued addressing, in the compelling manner mandated by M.P.E.P. § 2144.08 (III), the issues raised in this response and in the previous response. With respect to the subsequent office action, since this will be *the first time* that Applicants will see the Examiner's evidence and analysis with respect to each and every one of Applicants' arguments and supporting rebuttal evidence, *Applicants respectfully request that the subsequent office action have a new set of statutory deadlines for responding.* Otherwise, Applicants will not be given a full and fair hearing with respect to the new evidence and analysis that the Examiner presumably will provide for the first time in the subsequent office action.

In view of at least the foregoing, it is respectfully submitted that the pending claims 1-37 are in condition for allowance. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

Please charge any required fees not paid herewith or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

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Respectfully submitted,


Michael T. Cruz
Reg. No. 44,636

McAndrews, Held & Malloy, Ltd.
500 West Madison Street, 34th Floor
Chicago, Illinois 60661-2565
Telephone: (312) 775-8084
Facsimile: (312) 775-8100